In the High Court of Judicature at Madras

Dated: 02.09.2006

Coram

The Honourable Mr.JUSTICE R.BALASUBRAMANIAN
and
The Honourable Mr.JUSTICE V.DHANAPALAN

Criminal Appeal No.1068 of 2004

1. Ayyappan
2. Raja .... Appellants

Vs.

State by Inspector of Police,
Athur Police Station, Salem District. .... Respondent

APPEAL under Section 374 of the Code of Criminal Procedure against the judgment dated 23.7.2004 made in S.C.No.107 of 2004 on the file of the Additional District Sessions Judge (Fast Track Court No.2), Salem.

For Appellants : Mr.P.Rathanavel - A1
Mr.C.Selvaraj, S.C. for Mr.S.Mani - A2

For Respondent : Mr.N.R.Elango, Addl. Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by R.BALASUBRAMANIAN,J)

Appellants are two in number. They were tried in S.C.No.107 of 2004 on the file of the Additional Court of Sessions (Fast Track Court No.2), Salem under Sections 364 (A) read with 34 I.P.C., 302 read with 34 I.P.C. and 201 read with 34 I.P.C. At the end of the trial, the learned trial Judge found the accused guilty of all the offences, for which they were tried and sentenced each one of them to undergo imprisonment for life together with a fine of Rs.1,000/- carrying a default sentence on each of the first two charges and on the last charge, each one stands sentenced to undergo seven years rigorous imprisonment together with a fine of Rs.1,000/- carrying a default sentence. The sentences stand directed to run concurrently. Hence, the present appeal before this Court. Heard Mr.P.Rathanavel, learned counsel appearing for A1, Mr.C.Selvaraj, learned senior counsel appearing for A2 and Mr.N.R.Elango, learned Additional Public

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Prosecutor appearing for the State.

2. According to the prosecution both the accused kidnapped Kannan - young boy on 16.10.2003 at about 4.00 p.m. with a view to get ransom from his father; in the course of the same transaction, murdered him and with a view to screen the evidence of offence, they buried the body in the river bed and therefore punishable for the offences referred to earlier. To substantiate their case, the prosecution in all examined P.Ws. 1 to 22 and marked Exs. P.1 to P.30 and M.Os. 1 to 16. The defence on their side examined one witness as D.W.1. However, no documentary evidence was brought before Court at their instance.

3. P.W.1 and her husband Manoharan (since deceased) are the parents of Kannan, who is the unfortunate victim in the case on hand. According to her, her son studying in fourth standard in a Matriculation School near her house was left in the school at 9.00 a.m. on 16.10.2003 by her and he did not return home in the evening. He informs her husband Manoharan about their son not coming back home after school hours. Enquiries were made and since no useful information was forthcoming, P.W.1's husband went to the police station and gave the complaint. On the next day, when P.W.1 was in her house, P.W.3 came home and told P.W.1 and her husband that on the previous day he noticed around 4.30 p.m. opposite to the school, in which Kannan was studying, two persons - one tall and the other with a fair complexion took Kannan in a TVS 50 motor cycle by making him sit in between the two. P.W.3 also told P.W.1 and her husband that as he was under the impression that both the persons may be the relatives of P.W.1's family he did not take serious note of Kannan being taken by two persons on the previous evening. P.W.3 also told P.W.1 that as he came to know only on the next day that P.W.1's son is missing, he though it fit to give the details of what he saw on the previous evening. Immediately, P.W.1's husband went to the police station and gives a statement containing that information. On the 18th of that month, namely, the third day after the incident, P.W.9 came home and told P.W.1 and her husband as here under:

> "There was an incoming call to her house; the caller, saying that he is calling from Chennai, said that they have kidnapped P.W.1's son and as they would talk again on the telephone, a request was made to her to keep Manohar, husband of P.W.1 by the side of the telephone".

This information was also given by P.W.1's husband to the police and then he went to the house of P.W.9. Manoharan came back around 11.30 a.m. after attending to the incoming call in P.W.9's house and told P.W.1 that the incoming call was at 11.00 a.m. and the caller demanded a sum of Rs.4 lakhs for the release of their son Kannan, who was in their custody. P.W.1's husband also told her that he

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expressed his inability to the callers to pay so much of money, but however, the caller said that they would again telephone giving the date on which the payment has to be made and the place where the money should be taken. P.W.1's husband also told her that he informed the caller that as P.W.9's house is far away, the call can be made to the house of P.W.10, which is close to P.W.1's house. At 6.00 p.m. on 18.10.2003 P.W.1's husband was informed that there was a call to him on the telephone available in P.W.10's house and he was asked to be by the side of that telephone. Immediately, P.W.1's husband went to P.W.10's house and came back at 8.30 p.m. Once again there was a demand of a sum of Rs.4 lakhs and her husband had agreed to pay only a sum of Rs.20,000/-. This information also P.W.1's husband brought to the notice of the police. It appears that P.W.1's husband was informed by the caller that he would again call him on P.W.10's telephone. On the 19th of the same month, P.W.1 and her husband were informed that there is a call to him on the telephone available at P.W.10's house at 12 noon. Accordingly, P.W.1's husband went to P.W.10's house and came back at 3.30 p.m. stating that there was an incoming call to him on that number and the caller wanted to know whether P.W.1's husband had made ready a sum of Rs.4 lakhs and since P.W.1's husband has expressed his inability to pay so much, the caller came down to Rs.3 lakhs, for which P.W.1's husband had offered only a sum of Rs.50,000/-. P.Ws.1's husband told her that the callers told him that unless a sum of Rs.3 lakhs was paid, Manoharan and his son Kannan would be murdered and they gave out that they have already committed 25 murders. P.W.1's husband also told her that when he wanted the callers to give the phone to his son, they immediately disconnected the phone. P.W.1 and others were weeping on the night of 19.10.2003 and at that time information came to their house that the accused have been arrested in a telephone booth. Immediately P.W.1 and her husband went to the police station, where she found police examining A1 and A2. Both the accused confessed that they kidnapped Kannan and murdered him. On the 20th, namely, on the next day, at about 2.00 p.m. P.W.1 went to the river bed of Swetha river, where the Thasildar and the police personnel were present. The accused were brought there and they pointed out a place where earth was excavated and the dead body was exhumed in the presence of the Thasildar. She found the hands and legs of her son tied and he was wearing M.O.s 1 to 4, which he was wearing on the day when he left for the school. M.O.5 series, M.O.6 series, M.O.7 series and M.O.8 are note books, books, pencil box and the examination writing pad respectively. M.O.9 is the Nylon wire with which her son was found tied. P.W.1's husband had lent a sum of Rs.50,000/- to P.W.4. She had identified her husband's signature in the complaint, which signature stands marked as Ex.P.1. Exs. P.2 and P.3 are her husband's signatures in the subsequent statements given by him to the police.

4. P.W.20 is the Sub-Inspector of Police during the relevant

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time. At 8.00 p.m. on 16.10.2003, Manoharan, husband of P.W.1 and since deceased appeared before him and gave a written complaint, which he registered in Crime No.1174 of 2003 under the caption "Man Missing". Ex.P.20 is the report and Ex.P.21 is the printed first information report. He went to the school premises at 9.00 p.m. and in the presence of P.W.7 and another, he prepared Ex.P.5, the observation mahazar and rough Sketch Ex.P.22. By examining P.Ws. 6, 7 and others, he recorded their statements. P.W.20 made elaborate enquiries by examining the relatives and other people. At 9.45 p.m. on 17.10.2003, Manoharan appeared at the police station along with P.W.3 and gave another written statement. Ex.P.23 is the second statement. As per the second statement, the section of offence under Ex.P.20 was altered into one under Section 363 I.P.C. and Ex.P.24 is the altered first information report. P.W.20 examined Manoharan and P.W.3 and recorded their statements. He sent the express records to the higher officials. P.W.7 witnessed the preparation of Ex.P.5 the observation mahazar as spoken to by P.W.20. P.W.6 is the class teacher for Kannan. She would state that Kannan was attending the class on 16.10.2003 and left the class room at 4.00 p.m. on that day. M.O.1 and M.O.2 are their school uniform and M.O.3 is the belt, which the student of their school will wear. The buckle of M.O.3 contains the school logo. P.W.1's husband enquired her around 7.00 or 8.00 p.m. about Kannan not reporting in the house. The police examined her. P.W.7 is the Secretary of the school, who would also depose that Kannan was studying in their school in the fourth standard. He would state that Kannan's father enquired him on 16.10.2003 and all of them searched for Kannan. But they could not find him. He witnessed the preparation of Ex.P.5, the observation mahazar. Pursuant to the direction of Superintendent of Police at 7.00 a.m. on 19.10.2003, P.W.21, the Inspector of Police (Crime Branch) went to the Attur Police Station (Investigating police station) and after a discussion, he had decided to watch all the STD telephone booths at Gengavalli. At about 3.00 p.m., he received information from the Inspector of Police, Attur that from Village No.74, Krishnapuram, the accused have contacted Manoharan, father of the deceased in this case and therefore, P.W.21 must go and watch. Immediately, P.W.21 go to the Village No.74, Krishnapuram and when he was surveilling the telephone booth located in Mariamman Koil Street at Krishnapuram belonging to P.W.13, both the accused emerged from the telephone booth and he immediately apprehended them. P.W.21 after apprehending the accused produced both of them before the Inspector of Police, Attur Police Station at 6.30 p.m., as he is the investigating officer.

5. P.W.22 is the investigating officer in this case. At about 9.45 a.m. on 18.10.2003, Manoharan appeared before him and told him that the kidnappers have made a call to him in telephone No.233068 in the house of P.W.9 and also told him that the Kidnappers are likely to call again. P.W.22 advised Manoharan to engage himself in the

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conversation and find out what they are trying to say. Then P.W.22 contacted BSNL telephone exchange and requested them to surveil the said telephone number. Manoharan appeared before P.W.22 once again and told him the details of the call received by him at 11.00 a.m. and the demands made therein and that he had requested the kidnappers to call Manoharan in the telephone available in P.W.10's house, whose telephone number is 252995. P.W.22 again contacted BSNL and requested them to monitor the telephone number 252995 in the house of P.W.10. Manoharan told P.W.22 that even on P.W.10's telephone number there was a call from the kidnappers. P.W.22 traced the incoming call to P.W.9's house to perambalur, and accordingly, he deputed a Sub-Inspector of Police and other police personnel to Perambalur to watch. An incoming call to P.W.9's house was traced to a place called Kadamalai and accordingly, P.W.22 instructed the Sub-Inspector of Police to have surveillance at Kadamalai as well. P.W.22 examined further witnesses by recording their statements. As P.W.22 noticed that the kidnappers were making calls from here and there, he requested the Superintendent of Police to provide a special team and accordingly, the Superintendent of Police deputed a team under the leadership of P.W.21. P.W.22 asked P.W.21 to keep surveillance in Gengavalli area. P.W.22 by contacting BSNL requested them to monitor all calls to telephone number 252995 (P.W.10's telephone number) and P.W.22 was also monitoring the entire situation. There were incoming calls to telephone number 252995 between 2.51 p.m. till 3.21 p.m. on 19.10.2003 from the telephone with indicator number 234086 at Village No.74, Krishnapuram. P.W.22 also contacted 252995 at the same time over his official telephone. That was at 3.13 p.m. Then by contacting BSNL telephone exchange, he located the place where the telephone with indicator number 234086 is located. He immediately instructed P.W.21, who was only at Gengavalli, to go to that place and effect the arrest. We have already referred to earlier in this judgment, the arrest of the suspected accused by P.W.21. Ex.P.25 is the telephone chart given by BSNL telephone exchange for the number 252995. Ex.P.25 shows the details of the incoming calls to 252995 from telephone number 234086. P.W.21 produced the suspected accused before P.W.22 at 6.30 p.m.

6. P.W.22 arrested the accused in the presence of P.W.8 and another at 10.00 p.m. on 19.10.2003. When the first accused was examined in the presence of P.W.8, he gave a voluntary confession statement, the admissible portion of which is Ex.P.6. A2 also gave a confession statement, the admissible portion of which is Ex.P.7. Pursuant to those confession statements, the section of offence was altered into one under Sections 302 and 364 I.P.C. and Ex.P.26 is the altered express first information report, which was sent to the Court as well as to the higher officials. Since exhumation of the dead body had to be done, he sent Ex.P.27, the requisition to the Thasildar to exhume the body. P.W.3 appeared in the police station on 20.10.2003 and identified the accused. P.W.22 examined P.W.3 and

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recorded his statement. P.W.22 sent Ex.P.28 requisition to the Thasildar to enquire the accused as to whether their human rights were in any way violated. The Thasildar examined the accused by recording their statement and the entire process was videographed. At 1.45 p.m., P.W.22 , the Thasildar and others were taken to the Swetha River Bed by the accused and on the northern most boundary of the said river the accused pointed out the place where the body was buried. The Thasildar directed exhumation and it was accordingly done. P.W.22 prepared Ex.P.8, the observation mahazar for that place and Ex.P.29, the rough sketch. The Thasildar conducted inquest over the dead body in the same place. P.W.22 examined P.Ws. 1, 2 10 and others by recording their statements. After the inquest, P.W.22 sent a requisition to the doctor to conduct post-mortem at the spot. At the instance of the accused, the Gunny bag used to cover Kannan was recovered from the place identified by the accused two hundred feet south west of the place where the body was exhumed. The accused took the police party to the place where Kannan was murdered and Ex.P.30 is the rough sketch prepared by P.W.22 for that place. At the instance of the accused M.O.s 4 to 8 were also recovered under a mahazar attested by the same witnesses.

7. P.W.19 is the police constable, who took the letter given by P.W.22 to the Thasildar, who in turn gave his letter to the Government Hospital at Salem. P.W.19 taking that letter went to the Government Hospital and handed it over to the doctor and there after both of them went to the Swetha river bed, where the dead body was handed over to the doctor for conducting post-mortem. After post-mortem, P.W.19 handed over the dead body to the relatives after removing the shirt, trouser, belt and nylon rope tied on the dead body, which he handed over to the investigating officer. P.W.18 is the Thasildar, Gengavalli and he was in-charge of the office of Thasildar, Attur. On the morning of 20.10.2003, P.W.22 sent him a word that a child's body had been buried in the river bed and P.W.18 sent his letter to the Government Hospital, Salem for conducting post-mortem and he sent that letter through the very same police constable, who brought the intimation from the police officer. At 12.30 p.m. on that day, police produced both the accused before him. P.W.18 gave enough breather to the accused and then examined them. He had taken their signature in their statements. Their statements were sent to the Court. As per the statements, the accused took P.W.18 and the police to the river bed where they pointed out the place where earth was excavated. A Gunny bag was found on such excavation and when the bag was opened, a highly decomposed body of nine years old boy with his hands and legs tied in Nylon rope was found. P.W.18 conducted inquest at the spot itself by examining P.W.12 and others. Ex.P.19 is the inquest report prepared by him. P.W.18 sent a requisition to the hospital for conducting post-mortem. He examined P.W.4 and recorded his statement. He sent all the statements recorded by him to the Court. P.W.17 is the Judicial

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Magistrate, who examined P.W.4 under Section 164 of the Code of Criminal Procedure pursuant to the orders passed by the Chief Judicial Magistrate. Ex.P.17 series are the request given by the police officer to examine P.W.4 and the orders passed there on by the Chief Judicial Magistrate. Pursuant to the request and orders passed by the Chief Judicial Magistrate, as per Ex.P.18 series, P.W.3 was also examined by him under Section 164 of the Code of Criminal Procedure and his statement was also recorded. P.W.16 is the doctor, who did post-mortem on the dead body. Ex.P.14 is the request sent by the Thasildar asking him to come to the spot. Ex.P.15 is the requisition given by the Thasildar to conduct post-mortem. P.W.16 conducted post-mortem at the place where the dead body was exhumed and he found it to be de-composed. During post-mortem, he found various symptoms, as noted by him, under Ex.P.16, the post-mortem report. The symptoms noted are as here under:

> "Injuries: 1. An abrasion on lower lip 0.5 cm x 0.5 cm.
> 2. An abrasion on upper lip 0.5 cm x 0.5 cm (3) An abrasion on inner aspect of lower lip 0.5 x 0.5 cm (4) Laceration of tongue 1x0.5x0.5 cm. (5) Abrasion on nose 1x0.5cm. (Above injuries are antemortem in nature). Other findings:- Finger nails bluish Tongue & eyes protruded out. Post-mortem fluid oozing from mouth and nostrils. Greenish black discolouration over abdomen & face penis, scrotum and abdomen distended with gas scalp hair-peeled off.
> Internal: Heart-empty. Liver, Spleen kidneys - decomposed stomach. 100 gms. Undigested coconut white present no smell. Mucosa decomposed Hyoid bone - intact. Ribs - intact. No fractures. Scalp bones membranes - intact. Brain - liquified. Dura - intact. Lungs - congested & decomposed. Petechial haemorrhages present in inter lobar fissures."

Doctor opined that death is due to asphyxia as a result of smothering and death would have occurred three to five days prior to post-mortem.

8. P.W.22 continued his investigation by examining further witnesses and recording their statements. M.O.11- a TVS 50 Moped Motor Cycle was recovered from the house of A1. The second accused produced M.O.13 from his house, which was also recovered. All the proceedings were videographed. The crime scene was photographed from eleven different angles. M.O.15 series are three C.D. Cassettes and M.O.16 series are two video cassettes. P.W.14 is the photographer, who photographed the dead body on its exhumation. M.O.10 series are the photographs. P.W.8 is the Revenue Inspector during the relevant time at Attur. On a request sent by the Inspector of Police, he went

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to the police station along with the Village Administrative Officer. He was present when the accused were examined. Exs. P.6 and P.7 are the admissible portion of the confession statements of A1 and A2. He witnessed the preparation of Exs. P.8 and Ex.P.9 observation mahazar and the recovery of M.O.11 from A.1's house under Ex.P.10. He also witnessed the recovery of M.O.12, the Jute Bag under Ex.P.11 and the recovery of M.O.13 under Ex.P.12. He also witnessed the recovery of M.O.s.4 to 8 and 14 under Ex.P.13. P.W.22 came back to the police station with the arrested accused and the incriminating objects. The arrested accused were sent to judicial remand and the case properties were sent to the Court with a requisition to subject the same for chemical examination.

9. P.W.2 is a neighbour of P.W.1 and he came to know that Kannan was missing from the evening of 16.10.2003 and in that regard P.W.1's husband had given a complaint to the police. He also joined Manoharan in search of Kannan. On 17.10.2003, P.W.3 informed P.W.1's husband that on the previous day evening, he saw Kannan being taken by two persons. P.W.2 was present at that time, when both the accused pointed out the place where the dead body was exhumed. P.W.3 is a coolie by profession and he knows Manoharan – since deceased and his family. At about 4.00 p.m. on 16.10.2003, he saw Kannan being brought by A2 just opposite to the School; Kannan was made to sit in the TVS 50 Motor Cycle under the control of A1; A2 also sat on the motor cycle and they went towards the town. Kannan was seated in between A1 and A2 in the motor cycle. He would state that he would identify the motor cycle if he sees it and M.O.1 is the said motor cycle. On 17th, namely, on the next day, he found the parents of Kannan weeping stating that their son is not to be seen and therefore he told them what he saw on the previous day and he accompanied Manoharan to the police station. On the 20th of the same month, he went to the police station, where he found the accused sitting before the Inspector of Police and he was examined by the Judicial Magistrate. He would state that only the accused present in Court have Kidnapped Kannan. P.W.4 is the uncle of A1. He had deposed that he had borrowed a sum of Rs.50,000/- from Manoharan (P.W.1's husband), out of which, he lent a sum of Rs.30,000/- in three instalments to A1, since A1 wanted it for the foreign trip of his junior paternal uncle. A1 was selling plantains and dates. A1 was not paying any interest at all, which in turn affected P.W.4 from paying interest to Manoharan. Manoharan was often pestering P.W.4 for the return of money and P.W.4 told Manoharan that he had parted with the money in favour of A1 and therefore, Manoharan can collect the money from A1. A1 was postponing the repayment. Ten days prior to the death of Kannan in this case, A1 and A2 asked P.W.4 from whom he had borrowed the money, for which P.W.4 replied that he had borrowed from Manoharan. They wanted P.W.4 to show the house of Manoharan and P.W.4 told them the location and pointed out the house of Manoharan. At 6.00 p.m. on 16.10.2003, this witness came to know

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that Kannan was missing and at 12 noon on 17.10.2003 when P.W.4 was driving his auto-rickshaw in the bazaar, A1 came in his TVS 50 Moped Motor Cycle and intercepted him. Then A1 asked him as to whether there was anything going on in his village, for which P.W.4 answered that Manoharan's son is found missing. Out of curiosity and anxiety, P.W.4 asked him, in the context of he pointing out the house of Manoharan to him ten days earlier to them, as to whether they have done anything, for which A1 replied that in the company of A2, he had kidnapped Kannan and keeping him in secrecy. A1 also told him that P.W.4 should not disclose this to any one and whatever that may come, he would take care of. P.W.4 was so upset on the day on receipt of the information and therefore he went to the police station at 8.00 p.m. to inform the Inspector of Police. Finding that the Inspector of Police was not there, he returned home and on the next day, namely, on 18th, after finishing his day's work of driving the autorickshaw, he informed the Inspector of Police at 10.00 p.m. about the details he know about the crime. Ex.P.4 is his statement to the Inspector of Police.

10. P.W.5 saw, in the lands of Sundaram, both the accused sitting and talking with an young boy and he saw the dead body of the boy only on its exhumation. P.W.9's husband is one of the partners of Malar Matriculation School, where Kannan was studying. There is a telephone in her house with the indicator number 233068. She had stated that at 8.00 a.m. on 18.10.2003, there was an incoming call to her house where the caller stated that he is speaking from Chennai. Immediately, the line got disconnected. Forty five minutes later, again there was an incoming call and the caller once again said that he is calling from Chennai and that he had kidnapped Kannan from Malar Matriculation School and they wanted to talk to Manoharan, father of Kannan, and therefore requested P.W.9 to get Manoharan immediately by the phone. P.W.9 passed on this information to P.W.1 and her husband and accordingly, Manoharan came to her house at 11.00 a.m. There was a call and the caller wanted the phone to be given to Manoharan and accordingly Manoharan talked on the telephone. After the call, when P.W.9 asked Manoharan as to what it is about, Manoharan said that the caller is demanding a ransom of Rs.4 lakhs for releasing his son. As they wanted to call at 5.00 p.m., Manoharan had given the telephone available in the house of Vikramadityan, which is close to his house. P.W.10 is Vikramadityan, in whose house, there is a telephone with the indicator number 252995. There was a call to his telephone number on 18.10.2003 around 6.00 p.m. and the caller said that he is speaking from Chennai and he wanted to talk to Manoharan, his neighbour. Asking the caller to call again in ten minutes, P.W.10 brought Manoharan to his house and again the telephone came. P.W.10 handed over the phone to Manoharan and Manoharan conversed on the telephone and thereafter Manoharan told this witness that the kidnappers wanted a sum of Rs.4 lakhs and that Manoharan negotiated for a sum of Rs.20,000/-, which

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was refused by the kidnappers. Manoharan also told P.W.10 that the kidnappers would again call on the next day. On the afternoon of 19.10.2003, there was again a telephone call and therefore, P.W.10 sent word to Manoharan and Manoharan accordingly reached P.W.10's house at 2.00 p.m. There was a call at 3.00 p.m. and the caller said that he is speaking from Chennai and therefore P.W.10 gave the telephone to Manoharan and as Manoharan wanted the caller to give the phone to his son, the line got disconnected. P.W.10 came to know that the accused were arrested.

11. P.W.11 is having a STD telephone booth at Kadamalai and the indicator number of her telephone is 229534 for local call and 229535 for Subscriber Trunk Dialling call. She had seen the accused earlier and on 1.11.2003, the police brought both the accused to her booth and asked her whether she had seen them earlier. She answered that ten days before, they came to her booth and made calls. Both the accused have made only local calls and not trunk calls. P.W.12 is having a Subscriber Trunk Dialling Booth at Eraiyur. The telephone indicator number in her booth is 252256. On the 10th month both the accused have made use of her telephone and they were brought before her on 1.11.2003 to find out whether they have ever made any calls from her booth and she answered in the affirmative. P.W.13 is having a Subscriber Trunk Dialling Booth at 74 Krishnapuram with indicator number 234086. On 1.11.2003, police brought both the accused before her and examined her. She deposed that on 19.10.2003 both the accused made local call from her booth at 12.00 p.m. and again made four local calls at 3.00 p.m. and on each occasion, they paid the charges. Before both the accused could go out of the telephone booth, after they made the calls, they were taken into custody by the police. P.W.15 is the lessor of his land at Kanavaikadu, Gengavalli and the lessee is A1's father. He had leased the property by taking a loan of Rs.2 1/2 lakhs. Out of Rs.2 1/2 lakhs, he pays interest for a sum of Rs.2 lakhs and the remaining sum of Rs.50,000/- bears no interest. P.W.22 continued his investigation by examining further witnesses and recording their statements. By filing an affidavit and petition before the Court, he took the accused into police custody on 31.10.2003 and got them examined by the doctors at the Government hospital. As pointed out by the accused, he examined the various telephone booth owners. He gave requisition to the Court to examine P.W.s 3 and 4 under Section 164 of the Code of Criminal Procedure. After completing the investigation and all the other legal formalities, he filed the final report against the accused on 29.12.2003 for offences under Sections 302, 364 and 201 read with 34 I.P.C.

12. When the accused were questioned under Section 313 of the Code of Criminal Procedure based on the incriminating materials made available against them, they denied each and every circumstance put up against them as false and contrary to facts. Though no

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documentary evidence was produced at their instance, a witness was examined as D.W.1. D.W.1 in his evidence stated that he knows both the accused as persons belonging to the Village No. 74, Krishnapuram and A1 is his grand son through his daughter. A2 is his neighbour and he is also related to his son-in-law. About 10 months prior to he giving evidence in Court, (evidence was recorded on 19.7.2004) he went to a shandy at Attur to buy Goats. His younger brother Chinnappan accompanied him. However, they did not buy any Goats in the shandy and therefore, they came back home. While coming back, he wanted to visit his daughter at Village No.74, Krishnapuram. On reaching the house, he found that his daughter had left for Bombay and therefore he stayed there for two days along with his younger brother Chinnappan. It was at 10.00 or 11.00 a.m and at that time, A2 was brought by the police. A1 was with D.W.1 at that time. The police asked the first accused to come to the police station and two days later, the police filed a case that both the accused kidnapped and killed a boy. D.W.1's son-in-law is in abroad and A1 by paying a sum of Rs.2 lakhs is cultivating a land and receives a sum of Rs.3,000/- as interest. D.W.1's son-in-law, namely, A1's father annually send a sum of Rs.1 1/2 to 2 lakhs. Mr.C.Selvaraj, learned senior counsel appearing for accused No.2 would contend that there is no direct evidence to the crime and the circumstances produced before the Court are not clinching to conclude the guilt of the accused. The evidence of P.Ws. 3, 4 and 5 are far from convincing and in any event their delayed examination would damage their credibility. The arrest of the accused leading to the place being pointed out from where the dead body was exhumed is also open to serious doubt. The owners of the various telephone booths did not disclose what exactly was the conversation between the kidnappers and the persons at the receiving end and therefore, it is not possible to hold that the accused was demanding a ransom. Manoharan, who is shown to have received those calls is no more and therefore, whatever the other witnesses could have said in Court about the information passed on by Manoharan to them is only in the nature of hearsay evidence and as such inadmissible. Learned senior counsel would sum up that there is no legal evidence at all against any one of the accused to sustain their conviction. Mr.P.Rathanavel, learned counsel appearing for accused No.1 would submit that he is adopting the arguments of the learned senior counsel. We heard Mr.N.R.Elango, learned Additional Public Prosecutor on the above points.

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13. Let us now examine the merits and demerits of the prosecution case. It is no doubt true that there is no direct evidence of the accused murdering the young boy Kannan, whose mother is P.W.1 and his father Manoharan, who set the law in motion, is no more. As rightly contended by the learned senior counsel, the primary evidence regarding what exactly is the conversation between the kidnappers and the Manoharan can be only that of Manoharan. Manoharan is dead. There is no recording of the conversation except

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the records to show that there were calls. But that does not necessarily mean there is no demand at all. P.W.1 is the wife of Manoharan and mother of the deceased. She had given detailed evidence as to what her husband told her every time after attending the call from the kidnappers. On all those occasions, P.W.1 states that her husband told her about the quantum of demand made; the inability expressed by him to pay so much of money and the bargain made by him; the kidnappers coming down to Rs.3 lakhs as the ransom; once again P.W.1's husband expressing his inability to pay and ultimately the kidnappers telling as a final thing that unless Rs.3 lakhs is paid, not only Kannan, but also P.W.1's husband would be killed. P.W.1 had been cross examined on the peripheral aspects only and no particular cross examination has been done to her about what her husband told after attending to each call. She had categorically admitted that she has no personal knowledge about the conversation between the kidnappers and her husband, but all those details, she came to know only on her husband informing her. We see no reason at all as to why we should not take into account the evidence of P.W.1 about the ransom shown to have been made by the kidnappers for the release of Kannan as told to her by her husband. In fact this evidence of P.W.1 would be admissible as Res gestae evidence.

14. Now let us analyse the materials on the kidnapping of Kannan; his murder later on; screening of the evidence and then the exhumation. Before going into that, we will say at this stage that the prosecution had definitely established that the deceased died due to homicidal violence. P.Ws. 3, 4 and 5 speaks to the involvement of the accused in committing the crime. We have already extracted the evidence of P.W.3, which shows that on the evening of 16.10.2003, he saw the second accused bringing Kannan from the school; A1 was already in his motor cycle; Kannan was made to sit in the motor cycle and then the second accused also took his seat in the motor cycle and then the motor cycle went towards the town. Of course, he had admitted in his evidence in cross that he had not seen the accused earlier. But there is one fact, the fact being that on the fourth day after Kannan was kidnapped, the accused were apprehended and this witness saw them in the police station and identified them and that is the evidence of P.W.22 as well. This witness was examined in Court on 12.7.2004, hardly within 8 months from the date on which the crime was committed. This witness was very firm in Court that the accused present in Court alone kidnapped the victim. On his capacity to identify the accused in the police station and in Court, we find very little cross examination. In fact, no worth mentioning cross examination had been done at all on the evidence of P.W.2 that on the occurrence day evening, he saw A2 bringing the child to the motor cycle and then as stated earlier, both the accused leaving together in the motor cycle having Kannan seated in between them. Then we have the evidence of P.W.4, who is none less than the maternal uncle of A1. We have already extracted his evidence in the earlier portion

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of this judgment, which definintely shows that the accused was keen to know from whom P.W.4 borrowed money and as the first accused was under pressure to repay the money, they wanted P.W.4 to point out the house of Manoharan, which he pointed out. P.W.4's evidence also shows that on 17.10.2003, the first accused orally confessed to him about his involvement and the involvement of the second accused in kidnapping the victim. P.W.4 had given explanation as to why he passed on that information to the police only on 18th and we are fully satisfied with that explanation. Once again we will have to state that very little cross examination has been done on this witness. We must note that this witness is a blood relation of A1 and when he had stood strong in his evidence about the involvement of A1 and A2 in the crime, there is absolutely no reason to disbelieve him. Accordingly, we believe the evidence of P.W.4 also. Then we have the evidence of P.W.5. He had seen both the accused sitting and chatting with a young boy in the lands of which A1's father is shown to be the lessee. We have to again state that this witness also had not been cross examined on material aspects. Therefore, the evidence of P.Ws. 3, 4 and 5 establish the fact, namely, A1 and A2 kidnapped Kannan from the school; A1 orally confessed on the next day of the crime that he and A2 had kidnapped the victim and kannan, the abducted was last seen alive in the company of A1 and A2. Kannan was studying in Malar Matriculation School as spoken to by his class teacher P.W.6 and the Partner cum Secretary of the said School, P.W.7. M.Os. 1, 2 and 3 are the shirt, trouser and belt, which was found on the dead body on its exhumation and P.W.6 told that M.Os. 1 and 2 are their school uniform and in the buckle of M.O.3, their school logo is found. P.W.6 also stated that Kannan, who left the school at 4.00 p.m. on 16.10.2003 was not to be seen thereafter and Manoharan enquired them about his son. Therefore, the evidence of P.Ws. 6 and 7 completes the sequence of events as spoken to by P.Ws. 3 to 5.

15. The prosecution case is that the accused first made a call to Manoharan on the telephone available in the house of P.W.9 and Manoharan attended the call in her house as spoken to by P.W.9. It has come out in her evidence that Manoharan requested the kidnappers to call him on the telephone available in the house of P.W.10, since it is closer to his house. P.W.10's evidence also shows that Manoharan received calls from the kidnappers on his telephone number. Since this information had been passed on to the police, P.W.21 would state that on instruction from the Superintendent of Police, he had a discussion with P.W.22, the investigating officer and they decided a plan to apprehend the accused. The plan was to keep watch on all the STD Booths available in that area and such a scheme ultimately resulted in success to them. The evidence of P.W.22 shows, we have already extracted earlier, that he was in constant touch with BSNL telephone exchange to keep track of all the calls to the house of P.Ws. 9 and 10 and ultimately they succeeded in arresting the accused when they were just emerging out of the STD Booth owned by P.W.13.

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Ex.P.25 is the telephone chart given by the BSNL and the telephone chart relates to the incoming call and the out going calls to the telephone number 252995. This telephone with indicator number 252995 is in the house of P.W.10. The evidence of P.W.1 is that her late husband attended the call from the kidnappers in the house of P.W.10 at about 3 p.m. P.W.10 had also stated so. Telephone chart Ex.P.25 shows that from telephone number 234086, two calls were made to telephone number 252995 at 14:51:28 and 14:59:08. The telephone with indicator number 234086 is the telephone available in the STD Booth owned by P.W.13 and the other telephone with indicator number 252995 is in the house of P.W.10. On instruction from P.W.22, P.W.21 rushed to the telephone booth owned by P.W.13 and apprehended the accused, as they were coming out. P.W.13 had also stated so. So reading the evidence of P.Ws. 1, 10, 13, 21 and 22 and in the context of entries in Ex.P.25, as referred to above, it is clear that it is only the accused and the accused alone who had made calls from telephone number 234086 to telephone number 252995 just at or about 3.00 p.m. on 19.10.2003. There is no evidence to show that besides the accused anybody else was available in the telephone booth owned by P.W.13. Therefore, the prosecution had definitely established the other material, namely, that the accused alone made the calls to the house of P.W.10 and only through those calls they were making the last demands for ransom. This we hold as a second link and the first link being the evidence of P.Ws. 3, 4 and 5.

16. On the arrest of the accused, they were examined and their confession statements are on record, namely, Exs.P.6 and P.7, which are the admissible portions. Pursuant to Exs. P.6 and P.7, in addition to the other incriminating objects recovered at their instance, the most telling circumstance is the accused pointing out the place from where the dead body was exhumed. The Supreme Court of India in the judgment reported in 2000 SCC (Crl.) 263 (State of Maharashtra V. Suresh) had laid down the law, in the context of incriminating objects coming to be recovered at the instance of the accused, as here under:

> "Three possibilities are there when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he

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came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

The dead body was identified by P.W.1 as that of her son. M.Os. 1 to 3 were identified by P.W.6 as school uniform of every student in their school and the buckle in M.O.3 contains the school logo. Therefore, there cannot be any doubt regarding the identity of the dead body as that of P.W.1's son. When the accused pointed out the place where the dead body was exhumed, then as held by the Supreme Court, any one of the three options alone are available to them. But they have not taken any stand except denying the recovery. The place where the dead body was buried was known only to the accused and not to anybody else and in fact there is no evidence to the contra. Therefore, under these circumstances, the act of the accused showing the place from where the dead body came to be recovered is the most telling circumstance against the accused and in fact it completes the chain of circumstances brought by the prosecution against the accused. From the circumstances catalogued above, it is not possible for any Court much less for this Court to reach any conclusion other than the guilt of the accused alone. In other words the hypothesis of the innocence of the accused from the established circumstances stands totally eliminated. This means the accused alone are guilty and nobody else.

For all the reasons stated above, we find no infirmity in the judgment under challenge and accordingly it is sustained and the appeal is dismissed.

sl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District Sessions Judge, Fast Track Court No.2, Salem.

2. The Additional District Sessions Judge, Fast Track Court No.2, Salem through The Principal Sessions Judge, Salem.

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3. The District Collector,Salem.

4. The Director General of Police, Chennai

5. The Public Prosecutor,High Court, Madras

6. The Superintendent, Central Prison, Coimbatore.

7. The Inspector of Police, Athur Police Station, Salem District.

ONE CC TO MR.S. MANI, ADVOCATE SR NO 40196

Crl.A.No.1068 of 2004

02.09.2006

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